IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITON NO.371 OF 2005

Shah Thakur & sons. ...Petitioner.

vs.

National Bank for Agriculture & Rural Development (NABARD). ...Respondents.

Mr.J.P.Sen i/b. M/s.Kirit N.Damania & Co., for Petitioner.

Mr.K.D.Parekh with K.G.Munshi i/b. Kanga & Co.,for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 14th November,2005

P.C.:-

1. By this petition filed under Section 30 of the Arbiration Act 1940, the petitioner challenges the Award made by the learned Arbitral Tribunal. It is a non-speaking award. The first ground on which the Award is challenged is that there were two Arbitrators appointed one by each party. Initially the original Arbitrators did not agree on the appointment of Umpire and therefore, the Court has appointed Umpire. During the pendency of the Arbitral Proceedings, the said Umpire died. The another Umpire was not appointed. Therefore,

according to the petitioner, the Award impugned is ex facie invalid and is liable to be set aside In my opinion, the submission is misconceived. The Award made by the two Arbitrators is a well considered Award. There was no difference of opinion among the Arbitrators and therefore, really speaking the fact that the Umpire had expired and no Umpire was in place does not result in any prejudice. The Law is clearly laid down in the judgment in the case "Chouthmal Nathuram Joshi Vs. Bhagwandas Zutalal Marwadi, AIR 1973 Bombay 337". Secondly, if according to the petitioner, as the appointed Umpire had died and it was necessary to fill in the vacancy, it was for the petitioner to inform the Arbitrators about the death of the Umpire. I have not been shown any communication by which the petitioner had informed the Arbitrators that they have to make appointment of another Umpire. In this view of the matter therefore, in my opinion, the submission is not well founded. It being a non-speaking award, the submission of the claimant that though the claim was for the amount of more than Rs.18 crores, the Award made for the amount of Rs.3 crores only cannot be sustained and it is contrary to the evidence on record, cannot be accepted. The Arbitral Tribunal after considering the evidence on record has made the Award which is a non-speaking Award. In my opinion, therefore, in the absence of any legal misconduct, challenge to the Award cannot be entertained. The petition is therefore, disposed of.

In view of the rejection of the petition, the Award impugned in the petition is made rule of the Court.